In the High Court of Judicature at Madras

Dated: 26.04.2007

Coram

The Honourable Mr.Justice S.R.SINGHARAVELU

Review Application No.31 of 2007

V.K.Balakrishnan(Deceased)

1. B.Kasthuri

2. S.Vyjayanthi Mala

3. S.B.Prabhakar

4. M.Rathnamala

5. S.B.Santhosh Kumar

6. S.B.Ashok Kumar

7. S.B.Sathish Kumar
(Petitioners 1 to 7 brought
on record as LRs. of deceased
petitioner V.K.Balakrishnan as
per order dated 15.03.2007
in Civil Misc. Petn.No.802/2006) ...Petitioners

Vs

1. C.Shankar

2. V.K.Jagadeesan ... Respondents

Review Petition arises against the order passed by this Court in C.R.P.(NPD) No.878 of 2002 dated 02.03.2006.

For Petitioners : Mr.F.X.A.F.Denny

For Respondents : Mr.S.Ravindran

O R D E R

This Review petition arises against the order dated 02.03.2006 passed in C.R.P.(NPD)No.878 of 2002, which itself was preferred against the order dated 08.04.2002 made in R.C.A.No.853 of 1997 of the Rent Control Appellate Authority (VII Judge, Court of Small Causes), Chennai.

2. Originally R.C.O.P.No.2229 of 1995 was filed before the Rent Controller (XVI Judge, Court of Small Causes) Chennai, for eviction on the ground of wilful default. The Rent Controller has dismissed the eviction petition. That dismissal was on the ground that there was a bona fide denial of title. Subsequently, the Rent Control Appellate Authority found that there was no bona fide dispute regarding the title and the balance of convenience rests with the landlord and therefore based upon such other matters, eviction was ordered. It is against the said order of R.C.A., the Civil revision petition was preferred by tenant Balakrishnan. The civil revision petition was dismissed on 02.03.2006. Subsequently, on 14.03.2006, revision petitioner died and his legal representatives are now impleaded. These legal representatives of the original tenant Balakrishnan are the review petitioners herein.

3. On 2.3.2006, while deciding the Civil Revision Petition, this Court has gone into the order passed by the Rent Controller as well as the Rent Control Appellate Authority and had come to the conclusion that there was no bona fide denial of title and therefore, based upon the wilful default in payment of rent for 45 months, the civil revision petition was dismissed, confirming the order of the Rent Control Appellate Authority in passing an order of eviction.

4. The Review Petitioners submitted that there was a suit filed in O.S.No.7831 of 1994 before the VII Assistant Judge, City Civil Court, Chennai, praying for a permanent injunction restraining the landlord and his agents from interfering with the peaceful possession and enjoyment of the petition premises. According to the decree and judgment dated 7.12.1998 thereon, which was later confirmed on 29.08.2002 by the III Additional Judge, Fast Track Court, Chennai, in A.S.No.62 of 2001, there was an order of injunction against the landlord. It is submitted on behalf of review petitioners that as the proceedings of A.S.No.62 of 2001 was not brought to the notice of this Court during the arguments of civil revision petition, review of the earlier order of this Court is necessary in order to render justice.

5. Before ever we take notice of the result in A.s.No.62 of 2001 and as to whether it has got an implication in the revision proceedings, the maintainability of the review petition is to be decided. True it is that in the following cases, question of maintainability of revision was upheld in such a situation. In the following cases, it was held that the review petition is not maintainable.

(1) S.J.S.Fernandes ..vs.. Ranganayakalu Chetty 9(1952)2 MLJ 445)

(2) P.N.Thakershi ..vs.. Pradyumansinghji (AIR 1970 SC 1273)

(3) Seethalakshmi Ammal ..vs.. Rajammal ((1965) 1 MLJ 287)

(4) Syed Hanifa ..vs..Muhammad Khalifulla ((1969) 1 MLJ 413)

(5) Rajam Ayyar ..vs.. Pavanambal(AIR 1949 Mad.787)

(6) Chennakesayalu ..vs.. Mansukhlal ((1966) 1 MLJ 300)

In the following cases, it was held that the review petition is maintainable:

(1) Usman Koya ..vs.. Muthukrishnan

(2) Thirupathi Nadar ..vs.. Kandaswami Nadar

(3) Adaikappa Chetty ..vs.. Chandrasekhara Thevar

(4) P.M.Thakershi ..vs.. Pradyumansinghji (AIR 1970 SC 1273)

6. Having discussed with findings in all the above cited cases, it was ultimately held in T.N.Krishnamoorthy ..vs.. Jagat Textiles 1981 (1) MLJ 394 with the following observation;

"The power of revision conferred under section 25 of the Act XVIII of 1960 is on the High Court and while entertaining the revision it exercises the power of a Court created under the Constitution. It is not a 'persona designata'. When power is conferred on a Court, and no other special procedure is prescribed for disposal of matters under a particular statute, as held in P.N.Thakershi ..vs.. Pradyumansinghji A.I.R.1970 S.C.1273, by such conferment of power, there is necessary implication that the Code of Civil Procedure, would apply and in turn the power of review would be available to the High Court".

7. Even subsequent to the above judgment, it was held in Collector of Madras (Accommodation Controller), Madras-1 ..vs.. C.Logeswara Rao (1985 T.N.L.J. 282) as follows:

"Whether the Rent Controller and the Appellate Authority are Courts and whether the Code of Civil Procedure as such applies to the proceedings before them. Suffice it to point out that the Rent controller and the Appellate authority empowered to determine Question affecting the rights of citizens are certainly judicial bodies and the Proceedings before them are undoubtedly of a judicial nature. It is a well settled principle that such judicial and quasi-judicial Tribunals adjudicating upon rights of parties must possess inherent powers, apart from the express Provisions of the law, which are necessary for their existence and for the proper discharge of the duties imposed upon them by laws".

It was further held that "every judicial or quasi-judicial body, in the absence of express provision, must be deemed to possess, as inherent in its very Constitution, all such powers as are necessary to do the right and to undo the wrong in the course of the administration of justice. This is based on the principle embodied in the Maxim. Quando lex aliquid alicui concedit concedere vidatur id quo resipsa esse non protest (when the law gives anything to anyone, it gives also all those things without which the thing itself would be unavailable).

8. In arriving at the above conclusion, the following observation of Mahmood, J., in Narasingha Dass ..vs.. Mungal Dube (v,Allahabad 163 Full Bench) was relied upon in the above case;

"All Courts are not to act upon the Principle that every procedure has to be taken as prohibited unless it is expressly provided for by the Code. But on the converse Principle that every procedure is to be understood as permissible till it is shown to be prohibited by the law. As a matter of general principle, prohibitions cannot be presumed".

9. Thus, when a review petitioner, who lost his case, feel that had he submitted a vital proceedings

connected to the lis, perhaps he might have got the chance to succeed, negation of an opportunity may amount to failure of justice; and even if no prima facie case is found in favour of review petitioner, failure to give him an opportunity of being heard the revision petitioner may amount to denial of justice. Therefore, the review petition is found as maintainable; but subject to its own merits.

10. This review application was filed on the ground that had some more materials omitted to have been brought to the notice of the court were considered, then the revision petitioner could have got a more chance of success.

11. Before going to the merits of the review application, it is to be seen as to what was the rationale behind the dismissal of the revision petition filed by the predecessor of the review petitioners.

12. Originally, the vacant site belonged to one Ponnusamy, who on 10.05.1925 had executed a Will, which was probated in T.O.S.No.23 of 1927. According to that Will, Vedavalli, the first wife, who had no issues, and Thayarammal, the second wife, have to enjoy the same throughout the life and thereafter, the male descendants will get the property. One Srinivasan was related to the above sisters Vedavalli and Thayarammal. Srinivasan's heir is a tenant, by name, Balakrishnan (revision petitioner). Thayarammal had two sons Chellababu and Chelladurai. Chellababu had four sons including the landlord Shankar. Chelladurai had a son, by name, Kumar. Vedavalli died issueless.

13. Learned counsel for the revision petitioner contended that the revision petitioner relied upon a Settlement Deed dated 05.07.1957 executed by Chellababu and Chelladurai in favour of Srinivasan, the predecessor of the revision petitioner Balakrishnan. It was further contended that subsequent to the settlement deed, Srinivasan built a house thereon and therefore, the entire property belonged to Srinivasan, which was inherited by Balakrishnan, revision petitioner.

14. If this is true, then there will be a bona fide denial of title by Balakrishnan, against whom rent control original petition for eviction on the basis of wilful default in payment of rent was filed. If there is a bona fide denial of title, than eviction may not be ordered. But the Rent Control Appellate Authority found it as a mala fide denial of title and passed order of eviction.

15. It is in this context, the revision petitioner in the course of arguments in the civil revision petition submitted that denial of title was bona fide because as per the Will dated 10.05.1925 of Ponnusamy and the settlement deed dated 05.07.1957 of Chelladurai and Chellababu, wherein Vedavalli also signed, predecessor of revision petitioner had good title and that is why the denial of title of the landlord 1st respondent Shankar is to be found as bona fide denial; and in that event, there should not have been an eviction order passed.

16. After hearing both sides, what was found in the order of the revision petition dated 02.03.2006 is that since as on 05.07.1957 both Vedavalli and Tharayammal, life estate members were alive, there could not have been any title vested with residuary owners, Chellababu and Chelladurai, the sons of Thayarammal enabling them to execute a settlement deed on 05.07.1957 in favour of Srinivasan, the predecessor of Balakrishnan, the revision petitioner. By applying the principle that no one can convey better title than what he has, the donors in the settlement deed dated 05.07.1957, namely, Chellababu and Chelladurai had no surviving title at that time in that property and so, the settlement deed is not valid in the eye of law.

17. The signing of the settlement deed of the year 1957 by Vedavalli, who died in 1992, may at the worst be construed as her no objection in relinquishing her life estate created under the Will, in favour of Chelladurai and Chellababu. This act of relinquishment of Vedavalli may create a right of

possession from the date of settlement deed dated 05.07.1957 only up to 1992 when Vedavalli dies. This is so because the life estate of Vedavalli would be accruing till her death and the moment she died, it will enlarge as a title in favour of Chellababu and Chelladurai. For the present dispute, the signing of Vedavalli in the settlement deed may not thus be useful to the revision petitioner. Therefore, the settlement deed dated 05.07.1957 never carried any title. The rent control petition was filed in the year 1995 at which time, there is no semblance of title for the revision petitioner or his predecessor. It is, therefore, held in the revision petition that the denial is mala fide and so, the order of the eviction of Rent Control Appellate Authority was confirmed.

18. In these circumstances, it was argued on the side of respondent herein that under the guise of review in the present set of facts, there cannot be a re-appraisal of evidence; for which reliance was placed on Meera Bhanja .vs. Nirmala Kumari Choudhury (AIR 1995 SC 455) and L.Mohanan .vs. Mohammed Idris and others (2007(1) CTC 308). It was also held in Jain Studios Ltd.,through its President .vs. Shin Satellite Public Co.Ltd., ((2006(5) SCC 501) as follows:

"The power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. It is not rehearing of an original matter.....The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases....Such petition is in the nature of "second innings" which is impermissble and unwarranted and cannot be granted".

19. In the following cases, it was held that the ingredients of Order 47 Rule 1 CPC are to be satisfied with while asking for review.

Jasmer Singh .vs. Chandigarh State Co-op.Bank Ltd., (1999 LAB.I.C.1429).

In Thungabhadra Industries Ltd., ..vs.. The Government of Andhra Pradesh 1985(5) SCR 174 at 186, it was observed as follows:

"What, however, we are not concerned with is whether the statement in the order of September 1959 that the case did not invoke any substantial question of law is an "error apparent on the face of the record". The fact that on the earlier occasion the Court held on an identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an "error apparent on the face of the record", for there is a distinction which is real, though it might not always be capable of exposition between a mere erroneous decision and a decision which could be characterised as vitiated by "error apparent". A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error".

20. In Meera Bhanja .vs. Nirmala Kumari Choudhury (AIR 1995 SC 455), while quoting with Aribam Tuleshwar Sharma .vs. Aribam Pishak Sharma (AIR 1979 SC 1047), the court once again held that review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC.

21. In Parsion Devi and others .vs. Sumitra Devi and others (1998(I) CTC 25), it was held as follows:

"Under Order 47, Rule 1 CPC., a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise it power of review under Order 47, Rule 1, CPC. In exercise of the jurisdiction under Order 47, Rule 1 CPC, it is not permissible for an erroneous decision to be

"reheard and corrected". A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise".

22. In The Govt.of Tamil Nadu .vs. Registration Department SC/ST and M.B.C.Employees General Welfare Sangam (2006(1) CTC 161, it was held that review of judgment or order is contemplated to correct some mistake or error apparent on face of record; but not substitute a view. Power of review cannot be exercised to seek review of judgment already delivered for purpose of rehearing and fresh decision in case. Review cannot be an appeal in disguise. Phrase "any other sufficient cause" occurring in Order 47, Rule 1 must mean reason sufficient on grounds at least analogous to those specified in rule. Power of review may be exercised on discovery of new and important matter and evidence which after exercise of due diligence was not within knowledge of persons seeking review or could not be produced by person seeking review".

23. In PADALA RAMA REDDI's THE CODE OF CIVIL PROCEDURE, 1908, Grounds for review is defined as follows:

"Under the Provisions of Order XLVII, Rule 1, the Court of review has only a limited jurisdiction circumscribed by the definitive limits fixed by the language used therein. It may allow a review on three specified grounds, namely, (i) discovery of new and important matter or evidence which, after the exercise of due dilligence, was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed, (ii) mistake or error apparent on the face of record, and (iii) for any other sufficient reason. The words "any other sufficient reason" must mean "a reason sufficient on grounds, at least analogous to those specified in the rule". M.M.B.Catholicos & another ..vs.. Most Rev.M.P.Athanasius & Others, AIR 1954 SC 526".

24. In Union of India and others .vs. B.Valluvan and others ((2007(1) SCC (L&S) 28), the Supreme Court has found that the Division Bench of High Court, which allowed the review application, has committed a serious error in entering into the merit of the matter while exercising its review jurisdiction and observed that review jurisdiction must be exercised within the limitations as provided under Section 114 read with Order 47 CPC.

25. From all these decisions, it is made clear that under the guise of review, there cannot be any re-appraisal of evidence; or appeal in disguise; that review jurisdiction can be exercised only within the ambit of Section 114 read with Order 47 CPC; that if at all some new materials are to be introduced and such materials should have been out of the reach of the review petitioner even after his exercise of due diligence on bringing the matter to the notice of the Court before ever the revision petition was disposed of. But here is a case where the judgment in original suit and appellate proceedings were very much available with the revision petitioner and it cannot be said that even after due diligence, he was out of reach of those judgments containing observations in his favour. On merits of the case, those observations could not be taken into account in this review application.

26. However, on factual merits also, the review petition cannot be allowed, even after taking into account the earlier proceedings in O.S.No.7831 of 1994, wherein the order of injunction was granted in favour of the revision petitioner on 07.12.1998, which was later on confirmed on 29.08.1982 in A.S.No.62 of 2001 on the file of III Additional Judge, Fast Track Court, Chennai. A careful perusal of judgment in O.S.No.7831 of 1994 would only go to protect the possession of the revision petitioner, till such time, the relationship of landlord and tenant was established. Thus, it was only subject to the due process of eviction to be made by landlord. It is in pursuance of the filing of the above suit O.S.No.7831 of 1994 and based upon the relationship of landlord and tenant, R.C.O.P.No.2229 of 1995 was filed for eviction. The filing of RCOP is not in derogation of the order passed in the above suit, which was later on confirmed in A.S.No.62 of 2001.

27. It is true that in the RCOP proceedings, nobody had drawn the attention of the Court about the earlier proceedings in O.S.No.7831 of 1994, in which an injunction was granted protecting the possession of the revision petitioner, which was confirmed in A.S.No.62 of 2001. To mention again, what was protected in that proceedings was the possession of the revision petitioner subject to the landlord's rights to establish the relationship of landlord and tenant and also subject to his right of getting an order of eviction by due process of law. So, the earlier proceedings is not a bar in filing the rent control original petition. So far as the merits of the rent control original petition is concerned, we already discussed in detail that the denial of title made on the side of the revision petitioner was not bona fide; that he is liable to pay rent for the sake of his possession as he had no other right or title to be in possession of the property; that therefore, he was a tenant and when once there was mala fide denial of title on that score itself, he will be liable for eviction. So even if the new material is considered, there is nothing to be reviewed in favour of revision petitioner.

28. Even after considering the earlier proceedings in the suit and its appeal, it was concretely found that it will not improve the case of the revision petitioner for reasons mentioned supra. Therefore, there are no merits in the review petition and is liable to be dismissed.

For the foregoing reasons, the Review Application is dismissed.

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To

The Registrar,
Court of Small Causes,
Chennai.